

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM MAXIE, JR.,

Petitioner,

v.

CASE NO. 16-10351
HONORABLE VICTORIA A. ROBERTS

SHERRY L. BURT,

Respondent.

/

**ORDER DENYING PETITIONER'S MOTION FOR A STAY (ECF NO. 9)
AND GRANTING PETITIONER'S MOTION TO AMEND (ECF NO. 10)**

This is a *pro se* habeas corpus case under 28 U.S.C. § 2254. Currently before the Court are Petitioner's motion to hold his habeas petition in abeyance and his motion to amend his brief in support of the petition for writ of habeas corpus. For the reasons given below, the Court denies Petitioner's motion for a stay and grants his motion to amend.

Petitioner was convicted in Saginaw County Circuit Court of first-degree home invasion, Mich. Comp. Laws § 750.110a(2), and possession of burglar tools, Mich. Comp. Laws § 750.116. The trial court sentenced Petitioner as a habitual offender to concurrent terms of 150 months (twelve and a half years) to thirty years in prison for the home invasion and ten to twenty years in prison for possessing burglary tools.

Petitioner appealed his convictions on three grounds: (1) insufficient evidence at trial; (2) ineffective assistance of trial counsel; and (3) prosecutorial misconduct. The Michigan Court of Appeals affirmed Petitioner's convictions and sentence, see *People v. Maxie*, No. 314607 (Mich. Ct. App. July 22, 2014) (unpublished), and on February 3,

2015, the Michigan Supreme Court denied leave to appeal. See *People v. Maxie*, 497 Mich. 955; 858 N.W.2d 439 (2015).

Petitioner states that he subsequently filed a motion for relief from judgment in which he raised claims about his trial and appellate attorneys. After the trial court denied Petitioner's motion, he appealed to the Michigan Court of Appeals, raising only his claim about appellate counsel. The appeal was still pending before the Michigan Court of Appeals on February 1, 2016, when Petitioner filed his habeas corpus petition, which raises three claims: (1) insufficient evidence; (2) ineffective assistance of trial counsel; and (3) prosecutorial misconduct.

On July 20, 2016, Petitioner filed his motion for a stay. He alleges in the motion that his appeal from the trial court's denial of his motion for relief from judgment is now pending before the Michigan Supreme Court. Petitioner asks the Court to hold his habeas petition in abeyance pending resolution of his motion in state court and exhaustion of state remedies.

In a subsequent motion filed on September 6, 2016, Petitioner seeks permission to file an amended brief in support of his habeas petition and to have respondent Sherry L. Burt file an answer to the amended brief. The amended brief is attached to Petitioner's motion to file the brief. The Court understands the brief to assert the following grounds for relief: (1) there was insufficient credible evidence at trial to prove Petitioner's guilt; (2) the trial court denied deprived Petitioner of a fair trial through improper evidentiary rulings, and trial counsel was ineffective; and (3) the prosecutor's conduct deprived Petitioner of a fair trial.

In light of Petitioner's request to have Respondent file an answer to his amended brief, which does not include the claim apparently under consideration in state court, the Court finds Petitioner's motion for a stay to be moot. Accordingly, the motion for a stay (ECF No. 9) is denied, and the motion to amend the habeas brief (ECF No. 10) is granted. Respondent may have an additional twenty-one days from the date of this order to file a responsive pleading to the amended brief.

S/Victoria A. Roberts
VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

Dated: 9/9/2016